IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3422 OF 2007

Mr. Satesh H. Chandiramani ..Applicant

Vs.

Shri Sadashiv Namdeo Kharabi
and anr. ..Respondents

Mr. V.V. Purvant for applicant.
Mr. P.A. Pol, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : October 22, 2007.

P.C.:

1. Heard Mr. Purvant the learned counsel for the applicant who had filed criminal complaint bearing STC No. 22758 of 2005 under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of cheque in the sum of Rs.5,14,520/- issued by the respondent no.1 - original accused. The said complaint has been dismissed by the learned JMFC, Pune on 4/8/2007 and consequently the accused is acquitted.

2. The cheque was dated 17/8/2004 and it was for

the first time presented immediately thereafter. However, it was dishonoured with a remark "not arranged for" on 23/8/2004. The complainant did not issue the demand notice within 30 days immediately on this intimation. On the contrary he claimed in the complaint that on the advice of the accused the cheque was resubmitted sometime in the month of February 2005 and it was dishonoured on 18/2/2005 for two reasons, namely, (a) "out of date" and (b) "not arranged for". The complainant, therefore, issued a demand notice on 21/2/2005 for the first time and after waiting for 15 days from the receipt of the said notice by the accused, he filed the complaint. In the complaint it was stated that his mother Smt. Maya Chandiramani had advanced a loan of Rs.7,00,000/- to the accused to buy a Tata Truck and the vehicle was purchased and registered under Registration No. MH-12-QA-8705. An agreement between the parties was signed on 26/6/2001 and the vehicle was hypothecated in the name of Smt. Maya Chadiramani. The loan was to be repaid in 48 equated monthly instalments and the monthly instalment amount came to Rs.28,584/- Smt. Maya Chandiramani died on 3/2/2002 and thereafter the accused failed to

make the payment of the EMI. The balance loan amount was Rs.5,14,512/- in the year 2002, but in the year 2004 there was a settlement between the parties and by way of one time payment the complainant accepted to settle the transaction at Rs.5,14,512/-.

3. The trial court held that the demand notice ought to have been issued at the first instance when the intimation was received on 23/8/2004 regarding the dishonour of the cheque and subsequent act of the complainant to deposit the cheque at the instance of the accused purportedly could not give a fresh cause of action. Even otherwise, for the second deposit of the cheque in the month of February 2005, the cheque was out dated i.e. it was submitted for encashment after a period of six months and, therefore, it lost its value as a cheque. On both the counts the reasoning set out by the trial court does not call for reconsiderations at the hands of this court.

4. Hence, leave to appeal is refused and the application is rejected.

(B.H. Marlapalle,J.)